IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6088 of 2007()

CRIME NO.125/97 OF MALA POLICE STATION, THRISSUR.

: PETITIONER/ACCUSED NO.3

RAJAN N.K., S/O KUMARAN,
AGED 61, NADUMURI HOUSE,
PUTHENCHIRA DESOM, MUKUNDAPURAM TALUK,
THRISSUR DIST.

BY ADV. SRI.M.H.HANIL KUMAR

RESPONDENTS: COMPLAINANT/STATE

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1. SUB INSPECTOR OF POLICE,
MALA POLICE STATION, THRISSUR DISTRICT, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6088 of 2007

Dated this the 8th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. He faces allegations for offences punishable, inter alia, under Sections 447 and 427 I.P.C. The alleged incident took place in 1997. Cognizance was taken in 1997. The petitioner was not available for trial. Co-accused were acquitted. The petitioner had gone abroad. The case against him was refiled in 2003. It was transferred to the list of Long Pending Cases in 2004. The petitioner has not so far appeared. Coercive processes have been issued against the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful. He was constrained to leave India to take up employment abroad. The petitioner is willing to surrender before the learned Magistrate now. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that anticipatory bail may be granted to the petitioner.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-